

ORAL ARGUMENT NOT YET SCHEDULED  
CASE NO: 17-1097

**IN THE UNITED STATES COURT OF APPEALS FOR THE  
DISTRICT OF COLUMBIA CIRCUIT**

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XPO LOGISTICS FREIGHT, INC.  
Petitioner/Cross-Respondent,

v.

NATIONAL LABOR RELATIONS BOARD,  
Respondent/Cross-Petitioner.

ON PETITION FOR REVIEW FROM AN ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD

**JOINT DEFERRED APPENDIX**

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**CERTIFICATE OF SERVICE**

I hereby certify that on September 22, 2017, I electronically filed a true and correct copy of the foregoing using the United States Court of Appeals for the District of Columbia Circuit's CM/ECF filing system, thereby sending notification of such filing to all counsel of record.

/s/ Jonathan E. Kaplan

Jonathan E. Kaplan

Attorney for Petitioner/Cross-Respondent

**TAB 1**

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 13**

XPO Logistics Freight, Inc.	)	
	)	
Employer,	)	
	)	
and	)	Case No. 13-RC-177753
	)	
District 9, International Association of	)	
Machinists & Aerospace Workers	)	
AFL-CIO	)	
	)	
Petitioner.	)	

**EMPLOYER XPO LOGISTICS FREIGHT, INC.'S OBJECTIONS TO CONDUCT  
AFFECTING THE RESULTS OF THE ELECTION**

Pursuant to the Rules and Regulations of the National Labor Relations Board, including Section 102.69, XPO Logistics Freight Inc. ("Employer") hereby files the following Objections to Conduct Affecting the Results of the Election in connection with the election conducted by Region 13 of the National Labor Relations Board ("NLRB") on June 29, 2016 in Case number 13-RC-177753 filed by District 9, International Association of Machinists & Aerospace Workers AFL-CIO ("Union"). The objectionable conduct includes the following:

**OBJECTION 1:** During the critical period, the Union, and/or its agents or supporters, threatened and/or coerced an employee with the intention of getting the employee to vote in favor of Union representation.

**OBJECTION 2:** During the critical period, a vocal pro-Company employee had his work equipment and company property sabotaged by Union agents and/or supporters in retaliation for not supporting the Union.

**OBJECTION 3:** Through the above-referenced conduct, the Union and/or its agents created a general atmosphere of fear and coercion during the critical period and interfered with employees' ability to exercise a free, fair, and uncoerced choice in this election. The conduct set forth in Objections 1 and 2 above, either singularly or cumulatively, destroyed the minimum laboratory conditions necessary for a free and fair election.

**OBJECTION 4:** During the critical period, the Union and its representatives, agents and supporters engaged in additional improper or objectionable conduct that interfered with this election and rendered a free and fair election impossible.

Based on the foregoing Objections, or combination thereof, the Employer submits that the election must be set aside and a new election held.

Dated: July 6, 2016.

Respectfully Submitted,

/s/ Erik Hult

Erik Hult, Esq.  
Tanja Thompson, Esq.  
LITTLER MENDELSON PC  
3725 Champion Hills Drive, Suite 3000  
Memphis, TN 38125  
TThompson@littler.com

901.322.1223

901.531.8179 Fax

**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing was e-filed in accordance with NLRB requirements and served via electronic mail, this 6th day of July, 2016, upon:

Peter Sung Ohr  
Regional Director, Region 13  
Dirksen Federal Building  
219 South Dearborn Street, Suite 808  
Chicago, IL 60604-1443  
[Peter.ohr@nlrb.gov](mailto:Peter.ohr@nlrb.gov)

Rick A. Mickschl, Grand Lodge  
Representative  
District 8, International Association  
of Machinists & Aerospace Workers  
AFL-CIO  
113 Republic Avenue, Suite 100  
Joliet, IL 60435-3279  
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/s/ Erik Hult

Erik Hult

Firmwide:141349875.1 088391.1004

**TAB 2**



**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 13**

XPO Logistics Freight Inc.	)	
	)	
Employer,	)	
	)	
and	)	Case No. 13-RC-177753
	)	
District 9, International Association of	)	
Machinists & Aerospace Workers	)	
AFL-CIO	)	
	)	
Petitioner.	)	

**OFFER OF PROOF OF THE EMPLOYER XPO LOGISTICS FREIGHT INC.  
IN SUPPORT OF THE OBJECTIONS TO THE ELECTION**

Pursuant to the Rules and Regulations of the National Labor Relations Board (“NLRB”), including Sections 102.69, 102.66(c), and Form NLRB-5547, XPO Logistics Freight, Inc., (“Employer”) hereby files this Offer of Proof in Support of the Objections to Conduct Affecting the Results of the Election.

In accordance with the requirements of the above-referenced Rules and Regulations, the Employer presents the following offers of proof with respect to each Objection identified in the Employer’s Objections filed in this matter and will identify each witness the Employer would call to testify concerning the issues raised by each Objection and also provide a summary of the testimony of each respective witness.

**OBJECTION 1:**

During the critical period, the Union, and/or its agents or supporters, threatened and/or coerced an employee with the intention of getting the employee to vote in favor of Union representation.

**EMPLOYER WITNESSES FOR OBJECTION 1:**

Joe Last and Don-Traiel Carr.

**SUMMARY OF THE WITNESS' TESTIMONY:**

Employee Don-Traiel Carr will testify that during the critical period, vocal Union supporter Shamari Henderson approached Don-Traiel Carr and asked Mr. Carr whether rumors that employee Joe Last would be leaving the facility were true. Mr. Carr responded by saying he did not know whether those rumors were true and Mr. Henderson responded by saying that if Mr. Last left the facility, Mr. Carr would be “alone doing most of the work” because Mr. Carr did not support the Union and Mr. Last was his only ally. Mr. Carr will testify that he shared the contents of this conversation with Joe Last prior to the vote.

Joe Last will testify that Mr. Carr informed him that Shamari Henderson had told Mr. Carr that if Mr. Last left the facility, Mr. Carr would be the only one that worked in the shop that was not a Union supporter and would be responsible for completing the work of all the employees. Mr. Last will testify that Mr. Henderson's comments were “meant as a threat” to get Mr. Carr to vote for the Union and that Mr. Last perceived the statement as a threat.

**OBJECTION 2:**

During the critical period, a vocal pro-Company employee had his work equipment and company property sabotaged by Union agents and/or supporters in retaliation for not supporting the Union.

**EMPLOYER WITNESS FOR OBJECTION 2:**

Joe Last

**SUMMARY OF THE WITNESS'S TESTIMONY:**

Mr. Last will testify that on the day of the election, before he voted, he noticed that the grill on his forklift looked like it was going to fall off as he was backing it out of the facility. Upon inspection, he noticed that two bolts from the forklift were missing and the rest had been intentionally loosened. Mr. Last had checked these same bolts the evening before and they were securely fastened to the grill of his forklift. The bolts had to have been loosened and/or removed by a person in the facility, and Mr. Last had been targeted in the past and during the previous election at the facility for being a pro-Company employee.

Mr. Last will testify that he believes a pro-Union employee intentionally sabotaged his forklift by removing and/or loosening screws to make it appear that Mr. Last was not completing his job duties or so the grill would fall off and Mr. Last would be disciplined for the same, all in retaliation for not supporting the Union.

**OBJECTION 3:**

Through the above-referenced conduct, the Union and/or its agents created a general atmosphere of fear and coercion during the critical period and interfered with employees' ability to exercise a free, fair, and uncoerced choice in this election. The conduct set forth in Objections 1 and 2 above, either singularly or cumulatively, destroyed the minimum laboratory conditions necessary for a free and fair election.

**WITNESSES:**

Don-Traiel Carr and Joe Last

**SUMMARY OF THE WITNESSES' TESTIMONY:**

The summaries described above in relation to Objections 1 and 2.

**OBJECTION 4:**

During the critical period, the Union and its representatives, agents and supporters engaged in additional improper or objectionable conduct that interfered with this election and rendered a free and fair election impossible.

**WITNESSES:**

Don-Traiel Carr and Joe Last

**SUMMARY OF THE WITNESSES' TESTIMONY:**

The summaries described above in relation to Objections 1 and 2.

For the foregoing reasons, the Employer submits that the Region either set aside the election in this matter and immediately schedule a new election; or, alternatively, and in the least, schedule a hearing to allow the witnesses identified above the opportunity to testify about the misconduct summarized above, and then to set aside the election.

Dated: July 6, 2016

Respectfully Submitted,

/s/ Erik Hult

Erik Hult, Esq.  
Tanja Thompson, Esq.  
LITTLER MENDELSON PC  
3725 Champion Hills Drive, Suite 3000  
Memphis, TN 38125  
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901.322.1223  
901.531.8179 Fax

**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing was e-filed in accordance with NLRB requirements and served via electronic mail, this 6th day of July, 2016, upon:

Peter Sung Ohr  
Regional Director, Region 13  
Dirksen Federal Building  
219 South Dearborn Street, Suite 808  
Chicago, IL 60604-1443  
Peter.ohr@nlrb.gov

/s/ Erik Hult  
Erik Hult

Firmwide:141350220.1 088391.1004

**TAB 3**

TO: ALL XPO LOGISTICS FREIGHT, INC. EMPLOYEES

I am Erik Hult, the Company attorney.

The only purpose I have in interviewing you is to investigate potential objections the Company may have arising from the recent election conducted by the National Labor Relations Board in case 13-RC-17753.

Your participation in this investigation is strictly voluntary.

Your participation or lack of participation in this investigation will not in any way affect your job or your rights as an employee.

We are not interested in determining whether you are for or against the Union or if, or how you voted in the election.

We positively assure you that you have the right to join or not to join any labor organization without fear of reprisals.

We are interested only in the truth!

If you agree to participate in this investigation, would you please sign your name below to show that you have read this page.

Name: *for Test*

Date: 7-5-16

**STATEMENT**

I, JOE LAST, hereby state and declare that I reside at

\_\_\_\_\_, in HIGHLAND.

I have been employed by XPO Logistics Freight, Inc. approximately 19 (years)

(months). My job classification is that of MECHANIC. My

immediate supervisor is JOHN HINES.

I SPOKE TO DON-TRIEL THE DAY OF THE ELECTION TO  
TRY TO MAKE SURE HE WAS OK. AND HE TOLD ME ABOUT  
A CONVERSATION OR CONVERSATIONS THAT HAD RECENTLY TAKEN  
PLACE. ~~THE~~ JON SAVIN ASKED HIM IF THE RUMORS ABOUT  
ME LEAVING THE SHOP WERE TRUE. DON-TRIEL SAID HE DIDN'T  
KNOW. SHAMARI EITHER IN THAT CONVERSATION OR IN ANOTHER  
CONVERSATION TOLD HIM HE WOULD BE THE ONLY ONE  
LEFT AND THE ONLY ONE THAT WORKED IN THE SHOP THAT  
WAS NOT A UNION WORKER. I BELIEVE THAT WAS MEANT  
AS A THREAT TO GET HIM TO GO ALONG WITH THE  
GROUP THAT WANTED THE UNION AND VOTE FOR IT. I  
ALSO BELIEVE <sup>DON-TRIEL</sup> ~~HE~~ FELT THAT IT WAS A THREAT.

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Initial J.L.



ON JUNE 29, THE DAY OF THE ELECTION I WAS  
BACKING A FORKLIFT OUT OF MY BAY THAT I DID A PM  
ON MONDAY THE 27TH. WHEN I BACKED IT OUT THE GRILLE  
LOOKED LIKE IT WAS GOING TO FALL OFF. WHEN I LOOKED  
AT IT, 2 BOLTS WERE MISSING AND THE REST WERE  
BACKED OUT ABOUT  $\frac{1}{8}$  INCH. THERE IS NO WAY I MISSED  
THAT ON A P.M. AND I BELIEVE THAT THIS WAS DONE  
TO SABATOGUE MY WORK TO MAKE IT LOOK LIKE I DON'T  
DO MY JOB AS RETALIATION FOR NOT SUPPORTING THE  
UNION.

I FURTHER BELIEVE THAT MY TOOL BOX WAS DAMAGED  
BOTH LAST CAMPAIGN AND RIGHT AFTER THIS ELECTION  
AS RETALIATION FOR NOT SUPPORTING THE UNION. I  
AM AFRAID THAT THIS WILL CONTINUE AS WELL AS  
DAMAGE TO MY PERSONAL VEHICLE UNTIL I EITHER QUIT  
OR TRANSFER OUT OF THIS SHOP. I HONESTLY DON'T  
THINK I CAN AFFORD TO KEEP WORKING AT XVS.

I have read the above statement consisting of this and 12 other pages and it is true and correct. Before talking to me, Mr. Hult reviewed with me a list of assurances. I then read the list of assurances and signed it. I talked to Mr. Hult on my own free will and with no pressure. He followed the list of assurances to the letter. I have been given the opportunity to review my statement to check for any mistakes or errors, and I have done so. This statement correctly sets forth what I told Mr. Hult

I state under penalty of perjury under the laws of the United States of America that the foregoing statement is true and correct.

Dated: 7-5-16

Signed: for Test

TO: ALL XPO LOGISTICS FREIGHT, INC. EMPLOYEES

I am Erik Hult, the Company attorney.

The only purpose I have in interviewing you is to investigate potential objections the Company may have arising from the recent election conducted by the National Labor Relations Board in case 13-RC-17753.

Your participation in this investigation is strictly voluntary.

Your participation or lack of participation in this investigation will not in any way affect your job or your rights as an employee.

We are not interested in determining whether you are for or against the Union or if, or how you voted in the election.

We positively assure you that you have the right to join or not to join any labor organization without fear of reprisals.

We are interested only in the truth!

If you agree to participate in this investigation, would you please sign your name below to show that you have read this page.

Name:  \_\_\_\_\_

Date: 7/5/10 \_\_\_\_\_

**STATEMENT**

I, Don Traiel Carr, hereby state and declare that I reside at

\_\_\_\_\_ in Lake Station.

I have been employed by XPO Logistics Freight, Inc. approximately 5 (years)

(months). My job classification is that of Custodian Sen. My

immediate supervisor is John Hines.

I Don Traiel had a little bit of a issue  
with a comment that was told to me by Shamari.  
The comment that was told to me was  
"When Jocky leaves and the shop goes union  
I will be alone doing most of the work". He  
also began to tell me that they wanted me  
to go union as well, for the pension, and  
Insurance.

Page No. 1

Initial DC



I have read the above statement consisting of this and 1 other pages and it is true and correct. Before talking to me, Mr. Hult reviewed with me a list of assurances. I then read the list of assurances and signed it. I talked to Mr. Hult on my own free will and with no pressure. He followed the list of assurances to the letter. I have been given the opportunity to review my statement to check for any mistakes or errors, and I have done so. This statement correctly sets forth what I told Mr. Hult

I state under penalty of perjury under the laws of the United States of America that the foregoing statement is true and correct.

Dated: 7/5/16

Signed: 

**TAB 4**

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 13**

**XPO LOGISTICS FREIGHT, INC.**

**Employer**

**and**

**Case 13-RC-177753**

**LOCAL LODGE 701, INTERNATIONAL  
ASSOCIATION OF MACHINISTS &  
AEROSPACE WORKERS AFL-CIO**

**Petitioner**

**DECISION AND  
CERTIFICATION OF REPRESENTATIVE**

Pursuant to a Stipulated Election Agreement, an election was conducted on Wednesday, June 29, 2016 in a unit of the Employer's mechanics and custodians employed at Employer's facility currently located at 201 Blaine Street in Gary, Indiana. The tally of ballots showed that of the approximately 11 eligible voters, 8 cast ballots for Petitioner, and 3 cast ballots against union representation. There were no challenged ballots. Therefore Petitioner received a majority of the valid votes counted.

The Employer timely filed four objections. I have considered the Employer's objections and offer of proof. As discussed below, the Employer's offer of proof is insufficient to sustain the objections. Accordingly, I am overruling the objections and issuing a Certification of Representative.

**I. THE OBJECTIONS**

The Employer has raised four objections to alleged conduct that purportedly affected the results of the election. The objections are as follows:

1. "During the critical period, the Union, and/or its agents or supporters, threatened and/or coerced an employee with the intention of getting the employee to vote in favor of Union representation."
2. "During the critical period, a vocal pro-Company employee had his work equipment and company property sabotaged by Union agents and/or supporters in retaliation for not supporting the Union."
3. "Through the above-referenced conduct, the Union and/or its agents created a general atmosphere of fear and coercion during the critical period and interfered with employees' ability to exercise a free, fair, and uncoerced choice in this election. The conduct set forth in Objections 1 and 2 above, either singularly or cumulatively, destroyed the minimum laboratory conditions necessary for a free and fair election."

XPO Logistics Freight, Inc.  
Case 13-RC-177753

4. “During the critical period, the Union and its representatives, agents and supporters engaged in additional improper or objectionable conduct that interfered with this election and rendered a free and fair election impossible.”

The Employer’s offer of proof evidences no facts that fit the description of “additional improper or objectionable conduct” referenced in Object 4. Rather, all four objections rest on the two acts (an alleged threat and an alleged act of sabotage) referenced in the first two objections.

As Employer’s offer of proof makes clear, the alleged threat in Objection 1 was a question from a pro-Union employee to an anti-Union employee, asking if a third employee would be leaving the job—and a statement that, if the third employee did leave, the anti-Union employee would be “alone” and would have to do “all” the work. The anti-Union employee took this as a threat that the pro-Union employees would make him do extra work if he continued in his anti-Union stance.

As for the alleged act of sabotage in Objection 2, the Employer’s offer of proof clarifies that this objection arises from another anti-Union employee’s belief that loose and missing screws he discovered on the grille of his forklift one morning were the result of intentional sabotage by some unknown person. Employer indicates that if called to testify, the anti-Union employee would state that the screws must have been loosened by a Union adherent.

Conspicuous by its absence is any offer of proof tending to show that either the alleged threat or purported act of sabotage were carried out by agents of the Union (rather than by pro-Union employees or by unknown persons). Because Employer has offered no evidence that either the threat or the sabotage can be attributed to the Union, the rule in *Tampa Crown Distributors Inc.*, 118 NLRB 1420 (1957), applies. In that case the Board stated as follows:

In the absence of evidence that threatening or coercive conduct is attributable to one of the participating parties, the Board will not set aside an election, unless the character of the conduct is so aggravated as to create a general atmosphere of fear and reprisal rendering a free expression of choice of representatives impossible.

*Id.* at 1421.

Hence Employer’s objections will be sustained *only if* either the alleged threat or act of sabotage, or the two in combination, could have created a “general atmosphere of fear and reprisal.” But in the instant case, the aforementioned alleged threat and act of sabotage clearly could not have created that “general atmosphere of fear and reprisal” required to set aside election results under *Tampa Crown Distributors*.

First, a vague statement from a pro-Union employee to an anti-Union employee that the latter would have to do more work *if* some rumored event (the departure of another anti-Union employee) comes to pass hardly even qualifies as a threat. Even if reasonably understood as a



XPO Logistics Freight, Inc.  
Case 13-RC-177753

threat, however, it is not “aggravated” and not the stuff that would render free choice “impossible.”

Much the same can be said about the alleged loosening of screws on another anti-Union employee’s forklift. Even if the employee’s speculation about the cause of the loose screws was admissible evidence (for according to the Employer-submitted declaration, the anti-Union employee is totally without personal knowledge as to who loosened the screws), a few loose screws on a grille are insufficient to render free choice impossible.

The conclusion is no different when considering the two alleged incidents cumulatively. The combination of an ambiguous, conditional threat and a purely speculative act of sabotage could not, when taken together, have created a general atmosphere of fear and reprisal.

Finally, it is worth noting that Employer’s objection could only be sustained if Employer could show the two allegedly coercive acts created a *general* atmosphere of fear and reprisal—but Employer’s offer of proof is devoid of any evidence that other members of the proposed bargaining unit had any knowledge whatever of the “threat” and “sabotage.” So even if those acts were in some sense coercive, because Employer has offered no evidence that other members of the proposed unit knew about the acts, Employer would be unable to show that the acts created a “general atmosphere” of fear and reprisal.

For the foregoing reasons, and because all four of Employer’s objections arise from the same two purported acts and the testimony of the same two anti-Union employees, all Employer objections must be overruled.

## **II. CONCLUSION**

Based on the above, I overrule the objections, and I shall certify the Petitioner as the representative of the below-described bargaining unit.

## **III. CERTIFICATION OF REPRESENTATIVE**

**IT IS HEREBY CERTIFIED** that a majority of the valid ballots have been cast for Local Lodge 701<sup>1</sup>, International Association of Machinists and Aerospace Workers AFL-CIO, and that it is the exclusive representative of all the employees in the following bargaining unit:

**Included:** All full-time and regular part-time mechanics and mechanic/custodians employed by the Employer at its facility currently located at 201 Blaine Street, Gary, Indiana.

**Excluded:** All customer service representatives, Parts Department employees, managerial employees, office clerical employees and guards, professional employees and supervisors as defined in the Act.

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<sup>1</sup> The Tally of Ballots that issued on June 29, 2016 erroneously referred to the Petitioner as Local Lodge 71.

XPO Logistics Freight, Inc.

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#### IV. REQUEST FOR REVIEW

Pursuant to Section 102.69(c)(2) of the Board's Rules and Regulations, any party may file with the Board in Washington, DC, a request for review of this decision. The request for review must conform to the requirements of Sections 102.67(e) and (i)(1) of the Board's Rules and must be received by the Board in Washington by **August 3, 2016**. If no request for review is filed, the decision is final and shall have the same effect as if issued by the Board.

A request for review may be E-Filed through the Agency's website but may not be filed by facsimile. To E-File the request for review, go to [www.nlr.gov](http://www.nlr.gov), select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the Request for Review should be addressed to the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001. A party filing a request for review must serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review.

Dated: July 20, 2016

/s/ Peter Sung Ohr

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Peter Sung Ohr  
Regional Director  
National Labor Relations Board  
Region 13  
219 South Dearborn Street, Suite 808  
Chicago, Illinois 60604

**TAB 5**

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 13**

XPO Logistics Freight Inc.	)	
	)	
Employer,	)	
	)	
and	)	Case No. 13-RC-177753
	)	
District 9, International Association of	)	
Machinists & Aerospace Workers	)	
AFL-CIO	)	
	)	
Petitioner.	)	

**EMPLOYER XPO LOGISTICS FREIGHT, INC.’S REQUEST FOR REVIEW OF THE  
REGIONAL DIRECTOR’S DECISION AND CERTIFICATION OF  
REPRESENTATIVE**

Pursuant to Section 102.69(c)(2) of the Board’s Rules and Regulations, XPO Logistics Freight, Inc. (“XPO” or “Employer”) respectfully submits this Request for Review of Regional Director Peter Sung Ohr’s Decision and Certification of Representative (“Decision”) in the above-captioned matter. Compelling reasons exist for granting this Request for Review. As discussed below, the Employer’s Objections to Conduct Affecting the Results of the Election have merit and a hearing on the same is warranted. For these reasons, the NLRB should grant the Employer’s Request for Review, overturn the Decision and Certification of Representative, and order a hearing on the Employer’s Objections.

**I. RELEVANT PROCEDURAL HISTORY**

Pursuant to a Stipulated Election Agreement, an election was conducted on Wednesday June 29, 2016 in a unit of the Employer’s mechanics and mechanic/custodians employed at the Employer’s Gary, Indiana repair shop facility. The tally of ballots showed 8 ballots cast for the Petitioner, and 3 ballots cast against union representation. There were no challenged ballots.

The Employer filed four timely objections:

**OBJECTION 1:** During the critical period, the Union, and/or its agents or supporters, threatened and/or coerced an employee with the intention of getting the employee to vote in favor of Union representation.

**OBJECTION 2:** During the critical period, a vocal pro-Company employee had his work equipment and Company property sabotaged by Union agents and/or supporters in retaliation for not supporting the Union.

**OBJECTION 3:** Through the above-referenced conduct, the Union and/or its agents created a general atmosphere of fear and coercion during the critical period and interfered with employees' ability to exercise a free, fair, and uncoerced choice in this election. The conduct set forth in Objections 1 and 2 above, either singularly or cumulatively, destroyed the minimum laboratory conditions necessary for a free and fair election.

**OBJECTION 4:** During the critical period, the Union and its representatives, agents and supporters engaged in additional improper or objectionable conduct that interfered with this election and rendered a free and fair election impossible.

On July 20, 2016, Regional Director Peter Sung Ohr issued his Decision and Certification of Representative in this matter. The Regional Director found that Objections 1 and 2 must be overruled because the threat and act of sabotage "clearly could not have created [a] 'general atmosphere of fear and reprisal' required to set aside election results." Additionally, the Regional Director overruled Objection 3 and determined that "the combination of an ambiguous, conditional threat and a purely speculative act of sabotage could not, when taken together, have created a general atmosphere of fear and reprisal." The Employer now files this Request for Review of the Regional Director's Decision and Certification of Representative.

## **II. LEGAL ARGUMENT**

### **A. The Alleged Aggravated Threat And Equipment Sabotage Constitute Objectionable Misconduct**

Third-party threatening and coercive conduct that is so aggravated as to create a general atmosphere of fear and reprisal rendering a free expression of choice of representatives impossible is objectionable misconduct. *Tampa Crown Distributors, Inc.*, 118 NLRB 1420

(1957). In reviewing third-party misconduct, the Board also considers whether: (1) the threat encompassed the entire bargaining unit; (2) reports of the threat were disseminated widely within the unit; (3) the person making the threat was capable of carrying it out; (4) it is likely that the employees acted in fear of his capability of carrying out the threat; and (5) the threat was “rejuvenated” at or near the time of the election. *Westwood Horizons*, 270 NLRB 802, 803 (1984). The critical question is whether the conduct prevented a free election by destroying laboratory conditions:

It is not material that fear and disorder may have been created by individual employees or nonemployees and that their conduct cannot probatively be attributed to either the Employer or to the Union. The significant fact is that such conditions existed and that a free election was thereby rendered impossible. ... If the conduct, though that of a mere Union adherent and not that of a Union agent or employee, is sufficiently substantial in nature to create a general environment of fear and reprisal such as to render a free choice of representation impossible, then it will require the voiding of the election.

*YKK, Inc.*, 269 NLRB 82, 83 (1984).

Objection 1 alleges that, during the critical period, pro-Union employee A<sup>1</sup> told pro-Company employee B that he would be “alone doing most of the work” if he did not support the Union because fellow pro-Company employee C was planning on retiring. Upon receiving this threat, pro-Company employee B shared the threat with pro-Company employee C.

Contrary to the Regional Director’s Decision, the threat in Objection 1 was not a “vague statement” but rather a concrete threat that the pro-Union employees would force the pro-Company employee to do their share of the work if the pro-Company employee did not switch his vote. Indeed, pro-Company employee C’s affidavit specifically notes that he believes the

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<sup>1</sup> The specific identities of the individuals named in the offer of proof have been withheld to preserve their identities.

comments were “meant as a threat” to get pro-Company employee B to vote for the Union.

Moreover, the threat is “aggravated” in nature because it implies that those who do not switch their allegiances to the Union will end up responsible for the workload of pro-Union employees, or that pro-Union employees will blame pro-Company employees in the event work is not complete. The implication is clear – switch your vote or we will run you out of town. By its very nature, the threat is akin to a threat of job loss because it threatens the prospect of future employment for pro-Company employees. *Mike Yurosek & Son, Inc.*, 292 NLRB 1074, 1074 (1989) (new election ordered where anti-union activist stated: “we know who you guys are ... after the Union wins the election some of you may not be here”).

Moreover, the threat was sufficiently disseminated such that it created a general atmosphere of fear and reprisal. Pro-Company employee B told pro-Company employee C about the threat, which means that in this small unit nearly 30% of the voters were aware of the threat. *Heck’s Inc.*, 172 NLRB 2231, 2238 (1968) (threat that was disseminated to “nearly one-fifth of the entire bargaining unit” was sufficiently severe to “destroy[] the Union’s previously existing majority status”). Considering the remaining factors in *Westwood*, it is clear that Union supporters were capable of carrying out the threat, as they were more-than-capable of targeting pro-Company employees if they did not switch their allegiances. The threat concerned pro-Company employee B enough that he approached pro-Company employee C and relayed the threat, and it is undisputed that the threat was made during the critical period. In short, the threat was aggravated, disseminated, viable, made during the critical period, and was objectionable as a matter of law.

Similarly, the conduct alleged in Objection 2 created a general atmosphere of fear and reprisal sufficient to render a free election impossible. Even when applying this third-party test,

the Board has consistently considered threats and acts of physical violence and property damage sufficient to create an atmosphere of fear and reprisal sufficient to set aside an election. *Stannah Stairlifts, Inc.*, 325 NLRB 572 (1998); *See Q. B. Rebuilders, Inc.*, 312 NLRB 1141 (1993) (threats of physical violence, property damage, surveillance, loss of employment, or other untoward consequences are probative in determining the existence of a general atmosphere of fear and reprisal and warrant setting aside an election); *see Smithers Tire & Auto. Testing*, 308 NLRB 72, 73 (1992) (sustaining an employer's objections and ordering a new election after pro-union employees threatened to flatten the tires of pro-company employee's automobile). Pro-Company employee C's affidavit establishes that his forklift was tampered with on the morning of the election, before he voted, and that he had been targeted during the previous union election at the facility by pro-Union employees. The only reasonable conclusion is that pro-Union employees sabotaged his equipment before he voted in an effort to either change his vote or stop pro-Company employee C from voting at all, in the hopes that he would either: 1) be injured when the forklift grill fell and was run over; 2) be disciplined or discharged for damaging Company property or otherwise be distracted by the incident so as not to vote at all; or 3) be fearful of reprisal and, therefore, vote for the Union. This serious misconduct independently warrants setting aside the election as it is among the most direct interferences with employee voting rights.

**B. The Cumulative Conduct Alleged In Objections 1 And 2 Is Objectable**

The Regional Director also erred in overruling Objection 3 and holding that, when reviewing the conduct identified in Objections 1 and 2 cumulatively, there was no objectionable conduct. As noted, the conduct identified in Objections 1 and 2 covered a substantial portion of the very small voting unit and involved a serious threat implying that pro-Company employees



would be “run out of town” by pro-Union employees. This threat was backed up by sabotage of a pro-Company employee’s work machinery on the day of the election, before the employee had voted.

**C. At A Minimum, The Company Is Entitled To A Hearing To Present Its Election Objections**

At a minimum, XPO has provided sufficient information to require a hearing to proffer the evidence it has identified in support of its election objections. The Board’s Rules and Regulations call for a hearing when an objection raises substantial and material issues of fact. A hearing should be held if the objecting party has established that it “*could*” produce at a hearing evidence that, if credited, would warrant setting aside the election. Casehandling Manual Secs. 11392.6 and 11395.1; *Trim Associates, Inc. v. NLRB*, 351 F.3d 99, 105 (3rd Cir. 2003) (“it is unreasonable to expect the employer to document its objections with the kind of evidence that realistically could only be uncovered by subpoena in an adversarial hearing. All that [our court] requires is that the ‘objector’s proffer of evidence must *prima facie* warrant setting aside the election’ and may not be ‘conclusory’ or ‘vague’ but must point to specific events and specific people.”).

The Employer’s Offers of Proof provide evidence establishing that objectionable conduct affected at least 30 percent of the bargaining unit. The Employer is entitled to a hearing because the testimony and evidence it would proffer at the hearing *could* warrant setting aside the election, particularly if the Pro-Union employee alleged to have disseminated the threat to Pro-Company employee B admits to other threats or misconduct or to the sabotage of Pro-Company employee C’s work materials. Moreover, a hearing in this matter would provide a complete record on which the Region could better determine the aggravated nature of the alleged conduct and how widely it was disseminated.

### III. CONCLUSION

For the reasons set forth herein, as well as the Employer's original Objections and Offer of Proof, the Board should reverse the Decision and Certification of Representative and order that the Region conduct a hearing on the Objections that it overruled.

/s/ Erik Hult

Erik Hult, Esq.  
Tanja L. Thompson, Esq.  
LITTLER MENDELSON PC  
3725 Champion Hills Drive, Suite 3000  
Memphis, TN 38125  
[TThompson@littler.com](mailto:TThompson@littler.com)  
901.322.1223  
901.531.8179 Fax

**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing was e-filed in accordance with NLRB requirements and served via electronic mail, this 3rd day of August, 2016, upon:

Peter Sung Ohr  
Regional Director, Region 13  
Dirksen Federal Building  
219 South Dearborn Street, Suite 808  
Chicago, IL 60604-1443  
[Peter.ohr@nrlb.gov](mailto:Peter.ohr@nrlb.gov)

Rick A. Mickschl, Grand Lodge Representative  
District 8, International Association of Machinists & Aerospace Workers AFL-CIO  
113 Republic Avenue, Suite 100  
Joliet, IL 60435-3279  
[rmickschl@iamaw.org](mailto:rmickschl@iamaw.org)

/s/ Erik Hult  
Erik Hult

Firmwide:141859085.1 088391.1004

**TAB 6**

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD

XPO LOGISTICS FREIGHT, INC.  
Employer

Case 13-RC-177753

and

LOCAL LODGE 701, INTERNATIONAL  
ASSOCIATION OF MACHINISTS &  
AEROSPACE WORKERS AFL-CIO  
Petitioner

ORDER

The Employer's Request for Review of the Regional Director's Decision and Certification of Representative is denied as it raises no substantial issues warranting review.<sup>1</sup>

MARK GASTON PEARCE,      CHAIRMAN

PHILIP A. MISCIMARRA,      MEMBER

LAUREN McFERRAN,      MEMBER

Dated, Washington, D.C., Washington 9, 2016.

---

<sup>1</sup> Member Miscimarra agrees with the Regional Director and his colleagues that none of the allegedly objectionable employee conduct in this case requires a new election under the applicable multifactor standard set forth in *Westwood Horizons Hotel*, 270 NLRB 802, 803 (1984), for determining whether third-party threats warrant setting aside an election. Although Member Miscimarra agrees with that standard, he would abandon the phrase "general atmosphere of fear and reprisal" because it improperly suggests that an election cannot be set aside unless third-party threats affected nearly all eligible voters, no matter how close the tally and how serious the misconduct. See *Mastec Direct TV*, 356 NLRB 809, 813-815 (2011) (Member Hayes, dissenting) (criticizing *Westwood Horizons Hotel* on this point). Contrary to the implication of the phrase, the Board has in fact properly set aside elections based on serious third-party misconduct affecting only a few determinative voters. See *Robert-Orr Sysco Food Services*, 338 NLRB 614 (2002); *Smithers Tire*, 308 NLRB 72 (1992); *Buedel Food Products Co.*, 300 NLRB 638 (1990); *Steak House Meat Co.*, 206 NLRB 28 (1973).

**TAB 7**

*NOTICE: This opinion is subject to formal revision before publication in the bound volumes of NLRB decisions. Readers are requested to notify the Executive Secretary, National Labor Relations Board, Washington, D.C. 20570, of any typographical or other formal errors so that corrections can be included in the bound volumes.*

XPO Logistics Freight, Inc. and Local Lodge 701,  
International Association of Machinists & Aero-  
space Workers, AFL-CIO, Case 13-CA-189647

March 10, 2017

#### DECISION AND ORDER

BY ACTING CHAIRMAN MISCIMARRA AND MEMBERS  
PEARCE AND MCFERRAN

This is a refusal-to-bargain case in which the Respondent is contesting the Union's certification as bargaining representative in the underlying representation proceeding. Pursuant to a charge filed on December 9, 2016, by Local Lodge 701, International Association of Machinists & Aerospace Workers AFL-CIO (the Union), the General Counsel issued the complaint on December 16, 2016, alleging that XPO Logistics Freight, Inc. (the Respondent) has violated Section 8(a)(5) and (1) of the Act by refusing the Union's request to recognize and bargain with it following the Union's certification in Case 13-RC-177753. (Official notice is taken of the record in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(d). *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer admitting in part and denying in part the allegations in the complaint, and asserting affirmative defenses.

On December 30, 2016, the General Counsel filed a Motion for Summary Judgment. On January 9, 2017, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed a response.

#### Ruling on Motion for Summary Judgment

The Respondent admits its refusal to bargain, but contests the validity of the Union's certification of representative based on its objections to the election in the underlying representation proceeding.

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941).

Accordingly, we grant the Motion for Summary Judgment.<sup>1</sup>

On the entire record, the Board makes the following

#### FINDINGS OF FACT

##### I. JURISDICTION

At all material times, the Respondent has been a corporation with an office and place of business in Gary, Indiana (the Respondent's facility), and has been engaged in the business of interstate freight transportation, including to and from the Respondent's facility.

In conducting its operations during the calendar year preceding issuance of the complaint, the Respondent purchased and received goods, products, and materials valued in excess of \$50,000 at the Respondent's facility directly from points outside the State of Indiana.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

##### II. ALLEGED UNFAIR LABOR PRACTICES

##### A. The Certification

At all material times, Jeremy St. Pierre has been a supervisor of the Respondent within the meaning of Section 2(11) of the Act and an agent of the Respondent within the meaning of Section 2(13) of the Act.

Following the representation election held on June 29, 2016, the Union was certified on July 20, 2016, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

Included: All full-time and regular part-time mechanics and mechanic/custodians employed by the Employer at its facility currently located at 201 Blaine Street, Gary, Indiana.

Excluded: All customer service representatives, Parts Department employees, managerial employees, office clerical employees and guards, professional employees and supervisors as defined in the Act.

The Union continues to be the exclusive collective-bargaining representative of the unit employees under Section 9(a) of the Act.

##### B. Refusal to Bargain

On August 18, 2016, the Union, by letter, requested that the Respondent meet and bargain collectively with it as the exclusive collective-bargaining representative of the unit. Since about August 18, 2016, the Respondent

<sup>1</sup> The Respondent's request that the complaint be dismissed is therefore denied.

has failed and refused to recognize and bargain with the Union.

We find that the Respondent's conduct constitutes an unlawful failure and refusal to recognize and bargain with the Union in violation of Section 8(a)(5) and (1) of the Act.

#### CONCLUSION OF LAW

By failing and refusing since August 18, 2016, to recognize and bargain with the Union as the exclusive collective-bargaining representative of the employees in the appropriate unit, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

#### REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union and, if an understanding is reached, to embody the understanding in a signed agreement.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); accord *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), *enfd.* 350 F.2d 57 (10th Cir. 1965); *Lamar Hotel*, 140 NLRB 226, 229 (1962), *enfd.* 328 F.2d 600 (5th Cir. 1964), *cert. denied* 379 U.S. 817 (1964).

#### ORDER

The National Labor Relations Board orders that the Respondent, XPO Logistics Freight, Inc., Gary, Indiana, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to recognize and bargain with Local Lodge 701, International Association of Machinists & Aerospace Workers AFL-CIO, as the exclusive collective-bargaining representative of the employees in the bargaining unit.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive collective-bargaining representative of the employees in the following appropriate unit on terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

Included: All full-time and regular part-time mechanics and mechanic/custodians employed by the Employer at its facility currently located at 201 Blaine Street, Gary, Indiana.

Excluded: All customer service representatives, Parts Department employees, managerial employees, office clerical employees and guards, professional employees and supervisors as defined in the Act.

(b) Within 14 days after service by the Region, post at its facility in Gary, Indiana, copies of the attached notice marked "Appendix."<sup>2</sup> Copies of the notice, on forms provided by the Regional Director for Region 13, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since August 18, 2016.

(c) Within 21 days after service by the Region, file with the Regional Director for Region 13 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. March 10, 2017

Philip A. Miscimarra, Acting Chairman

Mark Gaston Pearce, Member

Lauren McFerran, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

<sup>2</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."



XPO LOGISTICS FREIGHT

3

## APPENDIX

NOTICE TO EMPLOYEES  
POSTED BY ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD  
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

## FEDERAL LAW GIVES YOU THE RIGHT TO

- Form, join, or assist a union
- Choose representatives to bargain with us on your behalf
- Act together with other employees for your benefit and protection
- Choose not to engage in any of these protected activities.

WE WILL NOT fail and refuse to recognize and bargain with Local Lodge 701, International Association of Machinists & Aerospace Workers AFL-CIO as the exclusive collective-bargaining representative of our employees in the bargaining unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL on request, bargain with the Union and put in writing and sign any agreement reached on terms and condi-

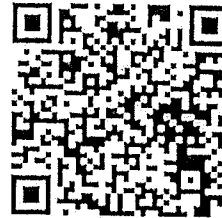
tions of employment for our employees in the following appropriate bargaining unit;

Included: All full-time and regular part-time mechanics and mechanic/custodians employed by us at our facility currently located at 201 Blaine Street, Gary, Indiana.

Excluded: All customer service representatives, Parts Department employees, managerial employees, office clerical employees and guards, professional employees and supervisors as defined in the Act.

## XPO LOGISTICS FREIGHT, INC.

The Board's decision can be found at [www.nlr.gov/case/13-CA-189647](http://www.nlr.gov/case/13-CA-189647) or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.



**TAB 8**



United States Government

**NATIONAL LABOR RELATIONS BOARD**

**OFFICE OF THE GENERAL COUNSEL**

Washington, D.C. 20570

May 8, 2017

Mark J. Langer, Esquire  
Clerk, United States Court of Appeals  
for the District of Columbia Circuit  
E. Barrett Prettyman U.S. Courthouse  
333 Constitution Avenue NW, Room 5423  
Washington, DC 20001-2866

Re: *XPO Logistics Freight, Inc., v. NLRB*  
D.C. Cir. Nos. 17-1097, 17-1103  
Board Case Nos. 13-CA-189647, 13-RC-177753

Dear Mr. Langer:

I am transmitting the Certified List of the contents of the Agency Record in the above-captioned case.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Linda Dreeben".

Linda Dreeben  
Deputy Associate General Counsel  
NATIONAL LABOR RELATIONS BOARD  
1015 Half Street SE  
Washington, DC 20570  
(202) 273-2960

Encls.

**UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

XPO LOGISTICS FREIGHT, INC.,	)	
	)	
Respondent/Cross-Petitioner	)	
	)	
v.	)	Nos. 17-1097
	)	17-1103
NATIONAL LABOR RELATIONS BOARD	)	
	)	
Petitioner/Cross-Respondent	)	

**CERTIFIED LIST OF THE NATIONAL LABOR RELATIONS BOARD**

Pursuant to authority delegated in Section 102.115 of the National Labor Relations Board's Rules and Regulations, 29 C.F.R. § 102.115, I certify that the list below fully describes all papers and documents that constitute the record before the Board in XPO Logistics Freight, Inc., Case Nos. 13-CA-189647 and 13-RC-177753.




---

Gary Shinnors  
Executive Secretary  
National Labor Relations Board  
1015 Half Street SE  
Washington, DC 20570

May 8, 2017

**INDEX TO CERTIFIED LIST**VOLUME I- Pleadings**13-RC-177753**

<u>Date</u>	<u>Documents</u>	<u>Pages</u>
06/16/16	Notice of Election	1-6
07/05/16	Respondent's (XPO Logistics Freight, Inc.) Employee Declarations	1-7

**13-CA-189647**

<u>Date</u>	<u>Documents</u>	<u>Pages</u>
12/30/16	Motion to Transfer Case to the Board and for Summary Judgment (with attachments)	1-48
01/09/17	Executive Secretary's Order Transferring Proceeding and Notice to Show Cause	1
01/23/17	Respondent's (XPO Logistics Freight, Inc.) Response to the Notice to Show Cause	1-5
03/10/17	Decision and Order (365 NLRB No. 42)	1-3

**UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

XPO LOGISTICS FREIGHT, INC.,	)	
	)	
Respondent/Cross-Petitioner	)	
	)	
v.	)	Nos. 17-1097
	)	17-1103
NATIONAL LABOR RELATIONS BOARD	)	
	)	
Petitioner/Cross-Respondent	)	

**CERTIFICATE OF SERVICE**

I hereby certify that on May 8, 2017, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the District of Columbia Circuit by using the appellate CM/ECF system. I certify that the foregoing document will be served on all parties or their counsel of record through the appellate CM/ECF system.

/s/Linda Dreeben  
 Linda Dreeben  
 Deputy Associate General Counsel  
 NATIONAL LABOR RELATIONS BOARD  
 1015 Half Street SE  
 Washington, DC 20570

Dated at Washington, DC  
this 8<sup>th</sup> day of May 2017

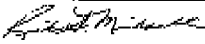
**TAB 9**

FORM NLRB-502 (RC)  
(4-15)UNITED STATES GOVERNMENT  
NATIONAL LABOR RELATIONS BOARD  
**RC PETITION**

DO NOT WRITE IN THIS SPACE	
Case No. <b>13-RC-177753</b>	Date Filed <b>6/7/2016</b>

**INSTRUCTIONS: Unless e-Filed using the Agency's website, [www.nlr.gov](http://www.nlr.gov), submit an original of this Petition to an NLRB office in the Region in which the employer concerned is located. The petition must be accompanied by both a showing of interest (see 6b below) and a certificate of service showing service on the employer and all other parties named in the petition of: (1) the petition; (2) Statement of Position form (Form NLRB-505); and (3) Description of Representation Case Procedures (Form NLRB 4812). The showing of interest should only be filed with the NLRB and should not be served on the employer or any other party.**

**1. PURPOSE OF THIS PETITION: RC-CERTIFICATION OF REPRESENTATIVE** - A substantial number of employees wish to be represented for purposes of collective bargaining by Petitioner and Petitioner desires to be certified as representative of the employees. The Petitioner alleges that the following circumstances exist and requests that the National Labor Relations Board proceed under its proper authority pursuant to Section 9 of the National Labor Relations Act.

2a. Name of Employer <b>XPO LOGISTICS</b>		2b. Address(es) of Establishment(s) involved (Street and number, city, State, ZIP code) <b>201 BLAIN STREET, GARY, IN 46406</b>	
3a. Employer Representative - Name and Title <b>JOHN HINES, MANAGER</b>		3b. Address (If same as 2b - state same) <b>SAME</b>	
3c. Tel. No. <b>219-944-8165</b>	3d. Cell No.	3e. Fax No. <b>219-949-8914</b>	3f. E-Mail Address
4a. Type of Establishment (Factory, mine, wholesaler, etc.) <b>TRUCK STORAGE</b>		4b. Principal product or service <b>TRUCKING</b>	6a. City and State where unit is located: <b>GARY, IN</b>
5b. Description of Unit Involved <b>Included:</b> All full-time and regular part-time mechanics employed at the employer's location of 201 Blain Street, Gary, IN 46406. <b>Excluded:</b> All parts department employees, office clerical, professional employees, managerial employees, guards and supervisors, as defined by the Act.			6a. No. of Employees in Unit: <b>10</b> 6b. Do a substantial number (30% or more) of the employees in the unit wish to be represented by the Petitioner? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
Check One: <input checked="" type="checkbox"/> 7a. Request for recognition as Bargaining Representative was made on (Date) _____ and Employer declined recognition on or about _____ (Date) (If no reply received, so state). Petition to serve as request. <input type="checkbox"/> 7b. Petitioner is currently recognized as Bargaining Representative and desires certification under the Act.			
8a. Name of Recognized or Certified Bargaining Agent (If none, so state). <b>None</b>		8b. Address	
8c. Tel No.	8d. Cell No.	8e. Fax No.	8f. E-Mail Address
8g. Affiliation, if any		8h. Date of Recognition or Certification	8i. Expiration Date of Current or Most Recent Contract, if any (Month, Day, Year)
9. Is there now a strike or picketing at the Employer's establishment(s) involved? <u>NO</u> If so, approximately how many employees are participating? _____ (Name of labor organization) _____, has picketed the Employer since (Month, Day, Year) _____			
10. Organizations or individuals other than Petitioner and those named in Items 8 and 9, which have claimed recognition as representatives and other organizations and individuals known to have a representative interest in any employees in the unit described in Item 5b above. (If none, so state)			
10a. Name	10b. Address	10c. Tel. No.	10d. Cell No.
		10e. Fax No.	10f. E-Mail Address
11. Election Details: If the NLRB conducts an election in this matter, state your position with respect to any such election.		11a. Election Type: <input checked="" type="checkbox"/> Manual <input type="checkbox"/> Mail <input type="checkbox"/> Mixed Manual/Mail	
11b. Election Date(s): <b>JUNE 23, 2016</b>	11c. Election Time(s): <b>9:00 a.m. - 10:00 a.m. / 8:00 p.m. - 9:00 p.m.</b>	11d. Election Location(s): <b>LUNCH ROOM or PARTS ROOM</b>	
12a. Full Name of Petitioner (including local name and number) <b>Local Lodge 701, International Association of Machinists &amp; Aerospace Workers AFL-CIO</b>		12b. Address (street and number, city, state, and ZIP code) <b>113 Republic Avenue, Ste. 100, Joliet, IL 60435</b>	
12c. Full name of national or international labor organization of which Petitioner is an affiliate or constituent (If none, so state) <b>International Association of Machinists &amp; Aerospace Workers AFL-CIO</b>			
12d. Tel No. <b>815-280-6400</b>	12e. Cell No. <b>630-430-6455</b>	12f. Fax No. <b>815-280-6345</b>	12g. E-Mail Address <b>rmickschl@iamaw.org</b>
13. Representative of the Petitioner who will accept service of all papers for purposes of the representation proceeding.			
13a. Name and Title <b>Rick Mickschl, Grand Lodge Representative</b>		13b. Address (street and number, city, state, and ZIP code) <b>113 Republic Avenue, Ste. 100, Joliet, IL 60435</b>	
13c. Tel No. <b>815-280-6400</b>	13d. Cell No. <b>630-430-6455</b>	13e. Fax No. <b>815-280-6345</b>	13f. E-Mail Address <b>rmickschl@iamaw.org</b>
I declare that I have read the above petition and that the statements are true to the best of my knowledge and belief.			
Name (Print) <b>Rick A. Mickschl</b>	Signature 	Title <b>Grand Lodge Representative</b>	Date <b>June 7, 2016</b>

WILLFUL FALSE STATEMENTS ON THIS PETITION CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

## PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information will cause the NLRB to decline to invoke its processes.



**TAB 10**

NATIONAL LABOR RELATIONS BOARD

Date Filed

6/7/2016

XPO LOGISTICS FREIGHT, INC.  
EMPLOYER

AND

LOCAL LODGE 71, INTERNATIONAL ASSOCIATION OF  
MACHINISTS & AEROSPACE WORKERS AFL-CIO  
PETITIONER

Case No. 13-RC-177753

Date Issued JUNE 29, 2016

City GARY

State IN

Type of Election:  
(Check one:)

(If applicable check  
either or both:)

- ☒ Stipulation  
☐ Board Direction  
☐ Consent Agreement  
☐ RD Direction  
Incumbent Union (Code)

- ☐ 8(b) (7)  
☐ Mail Ballot

**DOCKETED**

**TALLY OF BALLOTS**

The undersigned agent of the Regional Director certifies that the results of tabulation of ballots case in the election held in the above case, and concluded on the date indicated above, were as follows:

1. Approximate number of eligible voters 11
2. Number of Void ballots
3. Number of Votes cast for PETITIONER 8
4. Number of Votes cast for
5. Number of Votes cast for
6. Number of Votes cast against participating labor organization(s) 3
7. Number of Valid votes counted (sum 3, 4, 5, and 6) 11
8. Number of challenged ballots 0
9. Number of Valid votes counted plus challenged ballots (sum of 7 and 8) 11
10. Challenges are (not) sufficient in number to affect the results of the election.
11. A majority of the valid votes counted plus challenged ballots (Item 9) has been cast for PETITIONER

For the Regional Director

*[Signature]*

The undersigned acted as authorized observers in the counting and tabulating of ballots indicated above. We hereby certify that the counting and tabulating were fairly and accurately done, that the secrecy of the ballots was maintained, and that the results were as indicated above. We also acknowledge service of this tally.

For EMPLOYER

*[Signature]* DEJeler

For PETITIONER

*[Signature]*

For